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HOUSE OF REPRESENTATIVES
REPORT
101-368

PANAMA CANAL AMENDMENTS OF 1989

NOVEMBER 17, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 1347]

(Including cost estimate of the Congressional Budget Office)

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 1347) to amend the Panama Canal Act of 1979 with respect to compensation for certain members of the Panama Canal Commission, to extend retirement eligibility, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Panama Canal Act Amendments of 1989".

SEC. 2. COMPENSATION FOR BOARD MEMBERS.

Section 1102(b) of the Panama Canal Act of 1979 (22 U.S.C. 3612(b)) is amended in the last sentence by striking out "grade GS-18 of the General Schedule under section 5332" and inserting in lieu thereof "level V of the Executive Schedule under section 5316".

SEC. 3. COMPENSATION FOR DEDUTY ADMINISTRATOR AND CHIEF ENGINEER.

Section 1104(b) of the Panama Canal Act of 1979 (22 U.S.C. 3614(b)) is amended in the last sentence by inserting immediately before the period at the end thereof the following: ", and, if eligible, the overseas recruitment or retention differential provided for in section 1217 of this Act".

SEC. 4. RETIREMENT.

(a) ELIGIBILITY.—The subsection (i) added by section 1241(a) of the Panama Canal Act of 1979 is amended—

(1) by redesignating paragraph (3) of such subsection (i) as paragraph (4); and

(2) by inserting after paragraph (2) of such subsection (i) the following new paragraph:

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"(3) An employee of the Panama Canal Commission who was not employed at any time during the period beginning March 31, 1979, and ending September 30, 1979, by the Canal Zone Government or the Panama Canal Company, or by an Executive agency at a permanent duty station in the Canal Zone, who is separated from the service before January 1, 2000, and who has at the time of separation a minimum of 11 years of Panama Canal service is entitled to an annuity if the employee is separated—

"(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service if the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

"(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.".

(b) COMPUTATION.—The paragraph (2) added by section 1242(a) of the Panama Canal Act of 1979 is amended—

(1) by redesignating subparagraphs (A) and (B) of such paragraph as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(2)"; and

(3) by adding at the end thereof the following:

"(B) The annuity of an employee retiring under section 8336(d)(3) of this title with respect to the period of Panama Canal Service is 2½ percent of the employee's average pay multiplied by the years of that service.".

SEC. 5. AMENDMENTS TO PANAMA CANAL COMPENSATION FUND ACT OF 1988.

Section 5 of the Panama Canal Commission Compensation Fund Act of 1988 (102 Stat. 4685; 22 U.S.C. 3715c) is amended—

(1) by striking out "Upon the termination of the Panama Canal Commission:";

(2) in subsection (a)—

(A) by striking out "The Secretary of Labor" and inserting in lieu thereof "Upon the termination of the Panama Canal Commission, the Secretary of Labor"; and

(B) by striking out the last sentence;

(3) in subsection (b) in the first sentence—

(A) by inserting "under subsection (a)" after "Labor"; and

(B) by striking out "Employees Compensation"; and

(4) by adding at the end thereof the following:

"(c) CONTINUITY OF THE FUND.—(1) Amounts in the Fund (including amounts transferred as a result of the final determination made under subsection (a)) shall be maintained by the Secretary of the Treasury, shall be available for transfer to the Employees' Compensation Fund in such amounts as are requested by the Secretary of Labor pursuant to section 4 of this Act, and may be discontinued only in accordance with paragraph (2).

"(2) At such time as the Secretary of Labor certifies that no further liability exists for workers compensation benefits or other payments described in section 3(a), the Secretary of the Treasury may discontinue the Fund in the manner provided by law.".

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on October 1, 1989.

PURPOSE

The purpose of H.R. 1347 is to make several improvements to the Panama Canal Act of 1979 (Public Law 96-70). This bill accomplishes this purpose by increasing the level of compensation for the nine members who serve on the Panama Canal Board of Directors, by allowing the Deputy Administrator to receive a tropical differential allowance, by allowing those hired after September 30, 1979, to participate in the Commission's early retirement system, and by making a technical change in the Panama Canal Compensation Fund Act of 1988.

BACKGROUND

Section 1102(b) of the Panama Canal Act of 1979 (22 U.S.C. 3612(b)) was amended in 1987 with the enactment of the Omnibus Budget Reconciliation Act (Public Law 100-203) to allow the members of the Panama Canal Board of Directors to receive compensation while on official Panama Canal business, as authorized by the Chairman.

H.R. 1347 further modifies that language to allow these Board members to receive the daily equivalent of the annual rate of pay in effect for Grade Level V of the Executive Schedule. Presently, PCC Board members receive a GS-18 level of compensation for each day of Board business. Currently both salaries are capped at $75,500. If there is a wage increase, it is likely to affect those in Level V and above.

The second change amends Section 1104(b) of Public Law 96-70 (22 U.S.C. 3614) to allow the Deputy Administrator and Chief Engineer to receive the recruitment and retention remuneration pay authorized by the Act. This tropical pay differential has not been needed up until now because the Deputy Administrator has been a Panamanian since 1979. However, in 1990, under the terms of the Panama Canal Treaty, the Administrator will be a Panamanian and the Deputy Administrator will be an American. The Chief Engineer is a position established in 1979 which has not been filled to date; however, this bill authorizes the pay differential in case the position is filled in the future.

The third change would allow employees of the Panama Canal Commission to retire under special provisions if they are terminated involuntarily from employment as a result of the implementation of the Panama Canal Treaty of 1977. Coverage pursuant to this amendment will be limited to employees who have 20 years of government service (including 11 years of Panama Canal service) or employees who become 48 years old with 18 years of Government service (including 11 years of Panama Canal service). The bill further allows voluntary retirement for employees after 23 years of government service (including 11 years of Panama Canal service) or for employees who become 48 years of age with 18 years of government service (including the 11 years of Panama Canal employment). Section 1241 of the Act provides this coverage for employees who began their employment before the Treaty. This provision allows employees who began service after the Treaty's implementation to receive the same protection.

The last section of the bill makes technical changes to Public Law 100-705, the Panama Canal Commission Compensation Fund Act of 1988. Last year the House passed H.R. 5287, which subsequently became Public Law 100-705, establishing a workmen's compensation fund to accrue capital to cover any employee claim made against the Commission after the Canal is transferred to the Republic of Panama in the Year 2000. H.R. 1347 makes technical changes to Public Law 100-705.

The goal of this legislation is to allow the Panama Canal Commission to more efficiently operate the Canal in the days ahead. It does not abrogate, change, or affect any provision of the Panama Canal Treaties of 1977.

In addition, any expense involved in implementing these changes will be paid for entirely from Panama Canal toll receipts or other revenues collected by the Panama Commission. No U.S. taxpayer dollars are involved, nor will they be in the future.

Legislative History

On March 9, 1989, Congressman Jack Fields (R-Texas), the Ranking Minority Member of the Subcommittee on Panama Canal/ Outer Continental Shelf, introduced H.R. 1347 and H.R. 1348.

On Tuesday, July 18, 1989, the Subcommittee on Panama Canal/ OCS conducted a public hearing on these two proposals and received testimony from the Chairman of the Board of Directors of the Panama Canal Commission, The Honorable Robert W. Page. In his statement, Chairman Page indicated that the Panama Canal Commission supported the enactment of these two measures. In particular, he noted that the retirement provision in H.R. 1347, as introduced, was an excellent retention incentive for those employees, mainly pilots, who are desperately needed to keep the Panama Canal operating effectively into the year 2000.

In addition, he stated that this legislation did not give those individuals hired after the Treaties any additional benefits but that it would simply place them on the same level as those people hired prior to September 30, 1979. In simple terms, Chairman Page argued that it was fair and equitable to allow these individuals, who number about 45, to participate in the Commission's early retirement system.

In his opening statement to the Subcommittee, Congressman Fields indicated that it would not cost the Commission a great deal of money to implement these changes. Nevertheless, he stated, they will provide a morale boost to those individuals hired after September 30, 1979, and other Commission employees who are now working in a virtual war zone in the Republic of Panama.

On Tuesday, September 12, the Subcommittee met to mark up H.R. 1347 and H.R. 1348. Congressman Fields offered an amendment which combined the two proposals, deleted a section of H.R. 1347 requiring a Congressional authorization of all nonmaintenance widening of the Gaillard Cut region of the Canal, and expanded the coverage of the early retirement provisions to include voluntary separation. H.R. 1347, as amended, was reported to the full Merchant Marine and Fisheries Committee by voice vote.

The full Merchant Marine and Fisheries Committee considered H.R. 1347 at its markup session on September 26, and by voice vote ordered it favorably reported without further amendment to the House of Representatives.

Section-by-Section Analysis of H.R. 1347

SECTION 1. SHORT TITLE

This Act may be cited as the "Panama Canal Act Amendments of 1989."

SECTION 2. COMPENSATION FOR BOARD OF DIRECTORS

Members of the Board of the Panama Canal Commission serve without annual compensation but are allowed travel and transportation expenses and are authorized to be compensated at the daily equivalent of the annual rate of pay in effect for grade GS–18 of the General Schedule while attending meetings or while on official Panama Canal business. This section changes the rate on which such daily compensation is based from grade GS–18 of the General Schedule to Executive Schedule, Level V.

SECTION 3. COMPENSATION FOR DEPUTY ADMINISTRATOR AND CHIEF ENGINEER

Section 1104(b) of the Panama Canal Act of 1979 (22 U.S.C. 3614(b)) provides that pay for the posts of Deputy Administrator and Chief Engineer may not exceed the rate of basic pay in effect for grade GS–18 of the General Schedule under Section 5332 of Title 5, U.S. Code. This precludes payment of the Recruitment and Retention Remuneration authorized under Section 1217 of the Act. Regulations under that section, contained in 35 CFR Part 253, have recently been amended to allow payment of the extra remuneration to bureau directors and heads of independent units, positions subordinate to the Deputy Administrator and Chief Engineer. This section amends Section 1104(b) of the Act to permit payment of the Recruitment and Retention Remuneration to the Deputy Administrator and Chief Engineer, if otherwise eligible under the regulations, so that appointees to these positions may receive the same additional compensation as that afforded to those in subordinate positions.

SECTION 4. RETIREMENT ELIGIBILITY

Section 1241 of Public Law 96–70 sets forth the criteria for retirement eligibility for those employees on the rolls of the Panama Canal Commission's predecessor agencies (the Panama Canal Company/Canal Zone Government) during the period commencing March 31, 1979, and ending September 30, 1979. No provision was made for similar coverage for employees hired since the October 1, 1979, implementation of the Panama Canal Treaty. This amendment will ensure that protection to employees covered by the Civil Service Retirement Act in that category who are involuntarily separated from the service as a result of the implementation of any provision of the Treaty and related agreements before the January 1, 2000, termination of the Treaty period. Coverage pursuant to this amendment will be limited to employees with 11 years Panama Canal service at the time of separation who have 20 years total U.S. government service or who attain 48 years of age with 18 years of U.S. government service.

In addition, this language allows individuals with 11 years of Canal service to participate in the system, if they voluntarily retire after 23 years of government service or after becoming 48 years of age and completing 18 years of government service. These age and service requirements are identical to those contained in Section 1241 for pre-Treaty Canal employees covered by the provisions contained therein.

SECTION 5. PANAMA CANAL COMMISSION COMPENSATION FUND ACT OF 1988: TECHNICAL CORRECTION

Section 5(a) of the Panama Canal Compensation Fund Act of 1988 (22 U.S.C. 3715c(a)) provides that upon the termination of the Panama Canal Commission, amounts estimated to be necessary to meet expenditures for workers' compensation benefits be paid from the Panama Canal Compensation Fund into the Employees' Compensation Fund. Section 5(b) provides that any deficiency upon final evaluation be paid into the Employees' Compensation Fund from the Panama Canal Revolving Fund.

The Commission currently makes deposits into the Panama Canal Compensation Fund to accumulate funds sufficient to defray the estimated costs of the workers' compensation benefits. The Fund is invested in public debt securities and earns interest. The transfer of all funds into the Federal Employees' Compensation Fund, a non-interest bearing account, will result in a shortfall as the projected interest proceeds would not continue to accrue. The result could be insufficient funding to meet all the Panama Canal's projected obligations under Chapter 81 of Title 5, United States Code.

The intent of Congress was clearly stated in Section 1302 of the Panama Canal Act of 1979, Public Law 96-70 (22 U.S.C. 3712). That section provides that the costs of complying with the Treaty obligations of this agency be met through income generated by the Commission, and that funds expended from the U.S. Treasury be kept to the absolute minimum. This technical amendment will provide that the interest-bearing Panama Canal Compensation Fund will continue in existence until such time as all Commission claims under the Federal Employees' Compensation Act (FECA) are finally adjudicated. The Department of Labor will retain authority throughout that period, pursuant to section 4 of the Act, to access monies as necessary for the payment of those claims. The final settlement of accounts will be funded by the Panama Canal Revolving Fund, not the U.S. Treasury. Enactment of this amendment will also assure that monies required to meet agency FECA obligations will continue to be available for investment until disbursed to the claimants.

SECTION 6. EFFECTIVE DATE

The amendments made by this Act shall be effective on October 1, 1989.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 1347 will have no significant effect on process and costs in the operation of the national economy.

COST OF LEGISLATION

The Committee accepts the estimate of the Congressional Budget Office in this legislation.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

In compliance with clause 2(l)(3) of rule XI of the House of Representatives:

(A) in the consideration of H.R. 1347 the Committee made no new oversight findings and recommendations within the meaning of clause 2(b)(1) of rule X;

(B) the requirements of H.R. 1347 contain no new budget authority or increased tax expenditures reportable under Section 308(a) of the Congressional Budget Act of 1974;

(C) the Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause (4)(c)(2) of rule X, and;

(D) the estimate and comparison prepared by the Director of the Congressional Budget Office under Section 403 of the Congressional Budget Act of 1974 is set out below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 19, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1347, the Panama Canal Act Amendments of 1979, as ordered reported by the House Committee on Merchant Marine and Fisheries on September 26, 1989. Enactment of the bill would result in no significant cost to the federal government and in no cost to state or local governments.

H.R. 1347 would amend certain provisions in the Panama Canal Act of 1979 regarding employee compensation and retirement. These changes are not expected to result in any cost to the federal government in fiscal year 1990. Some additional costs may be incurred in the future, but they are not likely to be significant and in any case would have to be offset by toll increases or reductions in other commission expenses.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

DEPARTMENTAL REPORTS

No departmental reports.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

22 U.S.C. 3612(b)

§ 3612. Supervisory Board

(b) MEMBERSHIP OF BOARD; APPOINTING AUTHORITY; COMPENSATION AND TRAVEL EXPENSES.—The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 3617 of this title, except that, in addition to such travel or transportation expenses, members of the Board who hold no other office with either the Government of the United States or the Republic of Panama for which they receive pay are authorized to be compensated at the daily equivalent of the annual rate of basic pay in effect for [grade GS–18 of the General Schedule under section 5332] *level V of the Executive Schedule under section 5316* of Title 5, for each day during which they and traveling to or from or attending meetings of the Board as provided in subsection (c) of this section or, as authorized by the Chairman of the Board, while on official Panama Canal Commission business.

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22 U.S.C. 3614

§ 3614. Deputy Administrator and Chief Engineer

(a) There shall be a Deputy Administrator and a Chief Engineer of the Commission, both of whom shall be appointed by the President. The Deputy Administrator and the Chief Engineer shall perform such duties as may be prescribed by the President.

(b) The Deputy Administrator and the Chief Engineer shall each be paid compensation at a rate of pay established by the President which does not exceed the rate of basic pay in effect for grade GS–18 of the General Schedule under section 5332 of Title 5, *and, if eligible, the overseas recruitment or retention differential provided for in section 3657 of this title.*

PUBLIC LAW 96–70, SECTION 1241

SEC. 1241. (a) Section 8336 of title 5, United States Code, is amended—

* * * * * * *

(2) by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i)(1) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed by the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had

continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if the employee is separated—

* * * * * * *

"(3) An employee of the Panama Canal Commission who was not employed at any time during the period beginning March 31, 1979, and ending September 30, 1979, by the Canal Zone Government or the Panama Canal Company, or by an Executive agency at a permanent duty station in the Canal Zone, who is separated from the service before January 1, 2000, and who has at the time of separation a minimum of 11 years of Panama Canal service is entitled to an annuity if the employee is separated—

"(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service if the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

"(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

"[3]*(4)* For the purpose of this subsection—

"(A) 'Panama Canal service' means—

"(i) service as an employee of the Canal Zone Government, the Panama Canal Company, or the Panama Canal Commission; or

"(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or the Republic of Panama; and

"(B) 'Executive agency' includes the United States District Court for the District of the Canal Zone and the Smithsonian Institution.".

(b)(1) The amendments made by this section shall take effect on the date of the enactment of this Act, but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.

(2) Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection, would have been entitled to one or more annuity payments pursuant to the amendments made by this section for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.

PUBLIC LAW 96-70, SECTION 1242

EARLY RETIREMENT COMPUTATION

SEC. 1242. (a) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraphs:

"(2)*(A)* The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal

Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding—

"[A]*(i)* 2½ percent of the employee's average pay multiplied by so much of that service as does not exceeds 20 years; plus

"[B]*(ii)* 2 percent of the employee's average pay multiplied by so much of that service as exceed 20 years.

"(B) The annuity of an employee retiring under section 8336(d)(3) of this title with respect to the period of Panama Canal Service is 2½ percent of the employee's average pay multiplied by the years of that service."

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PUBLIC LAW 100–705, SECTION 5

SEC. 5. FINAL EVALUATION OF THE FUND: DEFICIENCY OR SURPLUS IN THE FUND.

[Upon the termination of the Panama Canal Commission:]

(a) FINAL EVALUATION OF THE FUND.—[The Secretary of Labor] *Upon the termination of the Panama Canal Commission, the Secretary of Labor* shall, on the basis of an actuarial study conducted by experts or consultants whose services are procured by the Secretary of Labor by contract, make a final determination of the amounts estimated to be necessary to meet expenditures for workers' compensation benefits and other payments described in section 3(a), as calculated in accordance with the second sentence of section 3(b). Amounts in the Fund shall be used to pay for the final determination under this subsection. [The Secretary of the Treasury shall, in accordance with such final determination, transfer from the Fund to the Employee Compensation Fund amounts sufficient to meet expenditures for workers compensation benefits and other payments described in section 3(a).]

(b) DEFICIENCY OR SURPLUS IN THE FUND.—If amounts in the Fund are not sufficient to meet expenditures as determined by the Secretary of Labor *under subsection (a)* for workers' compensation benefits and other payments described in section 3(a), then amounts in the Panama Canal Revolving Fund not otherwise obligated shall be transferred to the [Employees Compensation] Fund to make up the deficiency. Any amounts remaining in the Fund in excess of the final determination amount as described in subsection (a) shall be transferred to the Panama Canal Revolving Fund, and may be used to satisfy lawful obligations of the Revolving Fund arising on or before December 31, 1999.

(c) CONTINUITY OF THE FUND.—(1) Amounts in the Fund (including amounts transferred as a result of the final determination made under subsection (a)) shall be maintained by the the Secretary of the Treasury, shall be available for transfer to the Employees' Compensation Fund in such amounts as are requested by the Secretary of Labor pursuant to section 4 of this Act, and may be discontinued only in accordance with paragraph (2).

(2) At such time as the Secretary of Labor certifies that no further liability exists for workers compensation benefits or other payments described in section 3(a), the The Secretary of the Treasury may discontinue the Fund in the manner provided by law.

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